

Ghasi Ram Agrawal Vs. State of Bihar

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Court : Patna

Decided On : Feb-14-1996

Judge : Radha Mohan Prasad, J.

Appeal No. : Criminal Revision No. 175 of 1988

Appellant : Ghasi Ram Agrawal

Respondent : State of Bihar

Disposition : Application Dismissed

Judgement :

Radha Mohan Prasad, J.

1. This revision application is directed against the judgments of conviction and sentences passed in criminal case No. CII151/73 Tr. No. 1296783- by S.D.J.M., Katihar on 18.2.83 convicting the petitioner under Section 3(a) R.P. (U.P. Act and sentencing him to undergo rigorous imprisonment for two years affirmed by the learned 2nd Addl. Sessions Judge, Katihar, in Cr. Appl. No. 21/83.

2. The prosecution case, in short, is that on search being made to the house and godown of the petitioner certain railway properties were recovered and some them is alleged to were kept concealed under the earth and were brought out by digging the earth. A seizure list was prepared and the R.P.F. men brought those articles to

their office at Katihar along with the petitioner. After enquiry a prosecution report was submitted and the learned sub Divisional Judicial Magistrate, Katihar, took cognizance in the case and the petitioner was put on trial.

3. The defence of the petitioner was that he came in lawful possession of the recovered/seized railway properties through purchase from the railway administration in auction sale. The prosecution examined nine witnesses and on behalf of the defence D.W.I, Who was Asstt. Store Keeper in Katihar Railway was examined. He has proved four issue notes Exts. A to A/3 in the pen signature of C.R. Verman, issue note Ext. A/5 in the pen and signature of N.K. Kundro and one more issue note Ext, A/5 in the pen and signature of Vimal Sen Gupta of the Asstt. Store Keeper in Railways at Katihar. On consideration of the evidence both oral and documentary adduced on behalf of the parties the Sub-Divisional Judicial Magistrate found the charge proved against the petitioner and, accordingly, he convicted him under Section 3(a) of R.P. (U.P.) Act and sentenced him to under go rigorous imprisonment for two years.

4. Being aggrieved by the said judgment, the petitioner filed Cr. Appeal 21/83 in the court of the Sessions Judge, Katihar, which was finally heard by 2nd Addl Sessions Judge, Katihar. The appellate court confirmed the order of conviction and sentence and dismissed the appeal by the impugned judgment.

5. Mr. Rastogi, learned Counsel appearing for the petitioner submits that prosecution has completely failed to prove the fact that the stolen property was a railway property. Further he submitted that the prosecution has also failed to prove the three necessary ingredients for constituting art of fence under Section 3 of the R.P. (U.P.) Act. In support of this learned Counsel placed reliance on the decision of the Appex Court reported in : 1979 CriLJ1193 in the case of State of Maharastra v. Vishwanath Tukaram Umale and Ors. According to the principle lay down in the said decision three necessary ingredients to constitute an offence under Section 3 are as follows:

(i) The property in question should be railway property.

(ii) It should reasonably be suspected of having been stolen or unlawfully obtained, and

(iii) It should be found or proved that the accused was or had been in possession of that property.

6. On the other hand, Mr. Binoy Kumar, learned State Counsel submitted that in view of the specific case of the defence that the petitioner came in lawful possession of the recovered and seized railway properties through purchase from the railway administration in auction sale, the 1st and the 3rd ingredients aforementioned stands satisfied and did not require to be proved by the prosecution. According to him, in so far as the second ingredient is concerned, even according to the Supreme Court decision and several other decisions reported in 1974 Cr. L.J.R. P 1240 in the case of State of U.P. v. Bans Raj Singh and reported in 1976 Cr. L.J.R. P 1786 in the case of Anwar Uddin v. State, the onus lay on file petitioner to prove that he was in lawful possession of the recovered and seized railway properties. It is not disputed that the property in question was railway property, it is also not disputed that it was reasonably suspected of having been stolen or unlawfully obtained, particularly, where the case was registered on the basis of the report submitted by the Railway Protection Force, Katihar. The possession and the recovery of the property from petitioner is also not disputed.

7. Thus, in my opinion, learned State Counsel is right in his submission that the onus was on the part of the petitioner to prove that he was not in unlawful possession of the said property in order to satisfy the second ingredient as categorised by the Appex Court. From the judgment of the trial court it appears that Exts. A to A/5 were produced on behalf of the petitioner in support of his claim that the alleged stolen properties were validly acquired by him from the railway administration but as regards 12 numbers of break block of K item of seizure list is not covered by the said exhibits.

8. Thus, there was no evidence even about the name to prove his innocence in so far as possession 12 numbers of break block of K item of the seizure list by the petitioner. Even in support of Exts. A to A/5 the defence did not examine the

person conducting the auction sale or the persons who issued the said notes.

9. However, learned Counsel for the petitioner submitted that the alleged recovery was made long back in September 1973 and by now more than 23 years has lapsed. At the time of trial the petitioner was about 50 years and he by now must be over 65 years of age. He also submitted that in the said circumstances, the petitioner is entitled for invoking the provision of Section 360 of the Code of Criminal Procedure, which aspect has not been considered either by the two courts. It is also submitted that under Sub-section (4) of Section 360 of the Code of Criminal Procedure this Court can also consider this aspect in exercising its power of revision. It is further submitted that no such material has come so far that since after September 1973 there is any allegation against this petitioner, of committing any crime either under the provisions of the R.P. (U.P.) Act or under the Penal Code. Thus, this Court should take lenient view and reduce sentence to the period already gone.

10. The Supreme Court in the case of Vidhyadhar Ganesh Lanjekar v. State of Maharashtra reported in 1994 S.C.C. (Cri) 56, held that in awarding the sentences several circumstances should be taken into consideration and whether the same sentences should be awarded, particularly, when the occurrence is said to have, taken place several years back and further considering the prolonged proceeding, agony and harassment therefrom reduced the sentence of imprisonment to one already undergone. In this case also the proceeding has prolonged for ROW about 23 years during which the petitioner has already suffered agony and harassment. Further, I find that the age of the petitioner also warrants for reducing the sentence to one already undergone, particularly, when nothing has been brought on the records that since after September 1973 he ever indulged in commission of any offence either under the R.F. (U.P.) Act or in the Penal Code.

11. Accordingly, in my opinion, in the aforementioned circumstances, the trial court has rightly come to the conclusion that the stolen articles were not purchased by the accused in auction sale and petitioner was in an unlawful possession of the same. The revision application is, thus, dismissed on merit and the sentence is,

however, reduced to the one already gone by the petitioner. There shall, however, be no order as to cost.

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